

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5198 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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AVIRBHAV APARTMENTS CO-OP HOUSING SOCIETY LTD

Versus

ADDL CHIEF SECRETARY

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Appearance:

MR YN OZA for Petitioner

NOTICE SERVED for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

#. Heard Mr. Y.N.Oza learned counsel for the petitioner  
and I have also heard the learned Assistant Government  
Pleader for the respondents.

#. The petitioner is a Co-operative Society. Present petition has been filed challenging the order passed by the Additional Chief Secretary dated 1.6.1990 in Revision Application No.11 of 1989 dismissing the Revision Application filed by the petitioner society. The Addl. Chief Secretary by his order dated 1.6.1990 confirmed the order passed by the Collector, Surat on 23.12.1988 and by the said order set aside the sale of land to the petitioner society. The petitioner challenged the order passed by the respondent no.1 on the ground that such a decision of arbitrary, illegal, discriminatory and violative of the Constitution. Learned counsel for the petitioner submitted that while deciding the Revision Application by the Government it has not taken into consideration that by setting aside the sale in favour of the petitioner society, the Government has acted without jurisdiction. The petitioner society is registered under the Gujarat Co-operative Societies Act and it had purchased the land in dispute in auction sale and the same was confirmed on 22.5.1981. Thereafter the Collector issued a show cause notice on 24.11.1988 and the Collector has cancelled the sale by his order dated 23.12.1988. The matter was taken by the petitioner society in Revision before the Government and thereafter the Addl. Chief Secretary acting under the powers of the Government rejected the Revision Application of the petitioner. It is submitted by the learned counsel for the petitioner that present case is squarely covered by the decision of this Court passed in SCA No. 5442 of 1990. I have gone through the copy of the judgment and order produced before me by the learned counsel for the petitioners in the aforesaid case. I have gone through the judgment and order passed in the earlier case. In the earlier case it was decided that the Revisional power should not have been exercised after a period of one year. After going through the earlier judgment it appears that the facts and circumstances of the present case squarely covers the earlier case. In the present case also after purchasing of the land in auction sale the petitioner-herein formed a Co-operative Society and applied to the Competent Authority on 16.8.1981 for sanctioning the plan for construction of dwelling houses for 72 families. Government approved the plan and allowed the petitioner to construct the dwelling houses for 72 families. Accordingly permission was granted by the authority on 30.12.1981. After obtaining the permission from the competent authority the petitioner society started construction of dwelling houses for 72 families and since during the progress of the construction the Government rejected the Revision Application, the petitioner society filed the present SCA

in the year 1990 and this court passed interim order on 25.7.1990. The petitioner served the Government, the stay order granted by this Court on 11.6.1990. In the meantime the petitioner society has completed the construction of dwelling houses for 72 families and the 72 families are now residing in the said houses. Learned counsel for the petitioner submitted that in the absence of the order of this Court, the possession of the 72 families will be disturbed and the families will be thrown out from the building.

#. Learned Assistant Government Pleader further submitted that since there is no limitation for exercising the revisional power, no error has been committed by the Collector in exercising his revisional power after a lapse of 7 years. I do not agree with the submission of the learned Assistant Government Pleader for the respondent. It is further laid down by this Court that even though no limitation has been prescribed under Rule 211 of the Bombay Land Revenue Code such power should be exercised within reasonable time and in the instant case the power has been exercised after a lapse of about 7 years. Therefore, I am of the view that when the order of the Collector has been confirmed by the Government and permission for construction has been granted to the petitioner, at this stage there is no scope for interference. It is settled position that economically backward class people are residing in 72 residential houses.

#. Having regard to the fact and having regard to the settled position I am of the view that the Collector or Government should not have exercised the revisional power after a lapse of 7 years. Further in the instant case, the order of the Government is for change of entry in the record of rights. Even if any change is made in the record of right such a change cannot affect the right title and interest of the petitioner society in the purchase of land. Having regard to the facts and circumstances of the case and after hearing the arguments of both the parties I am of the view that the order passed by the Addl.Chief Secretary on behalf of the Government in Revision Application No. 11 of 1989 on 11.6.1990 should be quashed and accordingly the said order is quashed. Accordingly this petition is allowed. The Rule is made absolute to the aforesaid extent.

(P.K.Sarkar.J)

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